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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,455	03/12/2004	Roger David Socci	52726.000023	5274

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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER

FOREMAN, JONATHAN M

ART UNIT	PAPER NUMBER
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3736

MAIL DATE	DELIVERY MODE
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04/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/798,455	Applicant(s) SOCCI ET AL.	
	Examiner JONATHAN ML FOREMAN	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-58 is/are pending in the application.
- 4a) Of the above claim(s) 40-53 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/12/04 and 3/15/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3736

DETAILED ACTION

Election/Restrictions

1. Claims 40 - 53 and 58 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/2/08 and 1/2/09.

Information Disclosure Statement

2. The information disclosure statements submitted on 3/12/04 and 03/15/05 comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. They have been placed in the application file, and the information referred to therein has been considered by the examiner as to the merits. However, NPL documents that provide no date, or only a partial date wherein the year of publication is not sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the particular month of publication is not in issue have been lined through (See MPEP 609.04(a)).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 53 – 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,553,857 to Fish in view of U.S. Patent No. 4,630,829 to White.

In reference to claims 53 - 56, Fish discloses an integrated computer-based head motion training device for evaluating performance of a repetitive physical activity (Col. 3, lines 55 – 59),

Art Unit: 3736

including a processor (60) for receiving sensed head motion measurement data, evaluating the data based on predetermined head motion parameters (Col. 5, lines 6 – 15), and providing a feedback based on the evaluation (Col. 5, lines 17 – 25); an output device comprising at least one of a display and speaker (Col. 5, lines 17 – 25) for providing the feedback to the user; the physical activity is a golf swing (Col. 3, lines 55 – 59). Fish discloses an interface means for communicating data stored in the head motion training device to a separate computer device (Col. 5, lines 1 – 5). However, Fish fails to disclose a user interface for enabling the user to input a selection of parameters related to a club type or swing type. White teaches a computer-based repetitive motion training device for aiding a user in his golf swing having a user interface for enabling the user to input a selection of parameters related to a club type (Col. 6, lines 12 – 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the training device as disclosed by Fish to include a user interface for enabling the user to input a selection of parameters related to a club type as taught by White in order to allow a user to have a complete and permanent record of his performance (Col. 6, lines 20 – 22). The Examiner considers the selection of a club type to include a selection of a skill level in that it takes a different level of skill to swing different types of clubs.

5. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,553,857 to Fish in view of U.S. Patent No. 4,630,829 to White as applied to claim 54 above and further in view of U.S. Patent No. 7,416,537 to Stark et al.

In reference to claim 57, Fish in view of White disclose data from the training device being communicated to a separate computer device (Col. 5, lines 1 – 5), but fail to disclose the data being communicated through a public communications network. Stark et al. disclose a training device for the evaluation of a repetitive activity that includes the ability to communicate data to a separate

Art Unit: 3736

computer device through a public communications network (Col. 23, lines 56 – 67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Fish in view of White to use a public communications network to communicate data to a separate computer as taught by Stark et al. in order to allow the data to be evaluated at a remote location (Col. 23, lines 53 – 56).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN ML FOREMAN whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. M. F./
Examiner, Art Unit 3736

Application/Control Number: 10/798,455

Page 5

Art Unit: 3736

/Max Hindenburg/

Supervisory Patent Examiner, Art Unit 3736